No. 515.

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JAMES H. McKENNEY
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BRIEF ON BEHALF OF DEFENDANT IN ERROR.

Brief of Bryan for D. E.

Supreme Court of the United States.

Filed Mar. 5, 1898.

OCTOBER TERM, 1897.

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S. W. VANCE, W. S. BAHR AND J. M. SCOTT, ET AL, PLAINTIFFS IN ERROR,

vs.

W. A. VANDERCOOK CO., DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

J. P. K. BRYAN.
Counsel for defendant in Error

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STATEMENT OF THE CASE.

This is an action for recovery of personal property and damages, brought by the W. A. Vandercook Company, of the State of California, against S. W. Vance and others, claiming to act as officials and constables under the Act of the General Assembly of the State of South Carolina, generally known as the "State Liquor Dispensary." (Fol. 2 Record.)

The plaintiff is the proprietor of certain well-known vineyards in the State of California, known as the vineyards in the "San Gabriel, Santa Clara, Fresnos, Sonoma and Napa Valleys," and are producers from grapes of such vineyards of its well-known pure wines and brandies and other liquors, particularly of clarets, Rhine wines, Burgundies and champagnes. (Fol. 2 Record.)

The complaint further alleges that in February and March, 1897, the complainants in pursuance of certain orders of citizens and residents of Charleston, S. C., shipped from San Francisco, California, 26th March, 1897, by railroad, to ITS AGENT in the city of Charleston, S. C., one car load of such wines, products of complainant's said vineyards, containing seventy-three separate original packages, each marked W. A. Vandercook, Los Angelos, California," for each of said purchasers and customers, and also marked with specific brand of wine (as by schedule "A,") of the value of twelve hundred dollars. (Fol. 2, and 3 Record.)

That sixty-eight packages, schedule B and C, of value of one thousand dollars, were wrongfully seized at Charleston, S. C., on arrival at the railroad depot, *and delivery stopped*, by certain of defendants at Charleston, S. C., and were shipped to defendant, S. W. Vance, at Columbia, S. C., who claimed to act as State Commissioner under said State Liquor Dispensary Law of South Carolina, and detained, after repeated demands, said wines, and threatened to sell and convert the same. (Fol. 4 Record.)

The complaint further alleges that plaintiff is entitled to immediate possession of said packages, that the seizure was

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wrongful under color of the Dispensary Law of South Carolina of 1896 and 1897, which is alleged to be null and void and a restriction and regulation of commerce between the States. (Fol. 4, Record.)

Complaint further alleges repeated notice to defendants by plaintiff of the wrong-doing and demand for immediate return of said sixty packages of wine, but defendant refused to deliver same, and "do now detain same" wrongfully, wilfully-&c.

The complaint further alleged that by said seizure and *wrongful detention* of said sixty-eight packages of wine plaintiff has been greatly injured in its lawful trade with the citizens of South Carolina in the sum of ten thousand dollars. Fol. 6, Record.

EVIDENCE.

The evidence of R. R. Turner, on behalf of the complainants, is full in sustaining the allegation of the complaint as to orders of the citizens and residents of Charleston, S. C., for the wines of complainant's California vineyards, shipments from San Francisco to plaintiff's agent at Charleston, and seizure of same on arrival at Charleston, S. C., before delivery, and the notices and repeated warnings to defendants and their continued trespasses, notwithstanding, and damages to plaintiff "by such seizure and detention" in actual loss exceeds twelve hundred dollars; in addition to value of the property twelve hundred dollars. (Fol. 30-37. Record.)

And particularly he testified as follows:

"The plaintiff is a corporation created by and under the laws of the State of California, and are proprietors and owners of a number of vineyards in the State of California, known as "San Gabriel," "Santa Clara," "Fresna," and "Napa" Valleys, and producers of wines and brandies from the grapes," and also testified:

"Before, during and after these seizures intoxicating liquors *inter alia*, whiskey, beer, wine and brandy were being manufactured in the State of South Carolina. The distilleries, breweries, and vineyards were producing spirituous liquors, wine and beer within the State, and the same was used as a beverage in the State and sold within the State by State agents known as dispensers, at State liquor shops, known as dispensaries, under the provisions of the so-called State Liquor Dispensary Law, Acts 1896, 1897, and such liquor products of the State of South Carolina were being exported to other States by its citizens from the State. Some liquors, products of other States, were being imported by the State Board of Control from other States and sold by dispensers in broken packages and unbroken original packages. The imports consisted wholly of such products of other State or States as the Board of Control choose to import. *No products of the Vandercook California vineyards have ever been imported by the Board of Control or at any time offered for sale in the State Liquor Dispensaries in South Carolina.*"

"The United States Government has issued, upon application, licenses for wholesale and retail liquor dealers under the Revised Statutes of the United States, Sec. —, to the State liquor dispensaries throughout the State of South Carolina, and usual license fees have been paid by the State. (Fol. 37, Record.)

The testimony of *W. A. Vandercook*, *President* of Complainant Company, is also full to the allegations of the Bill, as follows:

"We have been and are willing to have the products of our vineyards inspected by the State of South Carolina under any lawful and reasonable system of inspection. The law of the State denies us inspection and sale of our goods in original packages in the State. There has been no demand upon us by any officer of the State for inspection of our goods sold in our agencies in original packages as imported into the State." (Fol. 38, Record.)

The answer of defendants set up Dispensary Law of South

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Carolina as legal justification, &c. Jury trial was waived and stipulation filed "that issues of fact be tried and determined "by the Court without a jury." (Fol. 23, Record.)

The Court found as matters of fact: "That the property "described in complaint is the property of the plaintiff, the "value thereof one thousand dollars, and that the damages "to plaintiff from the *detention* of the said property by the "defendants is the sum of one thousand dollars." Fol. 24, Record.

And as matter of law found and ordered plaintiff entitled to judgment against defendants for recovery of the possession of the property described in complaint or its value, one thousand dollars, and damages so found in the sum of one thousand dollars. Fol. 24, Record,

FIRST EXCEPTION.

That the Court has no Jurisdiction of the Subject-Matter of the Action.

By reference to the complaint it will be seen that this action is between the W. A. Vandercook Co., a California corporation, and defendants, citizens and residents of the State of South Carolina. Folio 2, record. And that the summons and complaint in this action were duly served upon the defendants. Folio 11-12.

It further appears by the record that the value of the sixty-eight packages of wine sued for was $1,000.00 and damages alleged for wrongful taking and detention, is ten thousand dollars.

It further appeared from the complaint that the rights of the plaintiff, which are alleged to be violated, are rights claimed under the Constitution of the United States, denied to the plaintiff under the alleged authority of an Act of the General Assembly of the State of South Carolina, approved

March 6, 1896, and amended March 5, 1897, known as the "Dispensary Law," which denied to the plaintiff commerce, intercourse and traffic with the citizens and residents of the State of South Carolina, in the products of the plaintiff's vineyards, situated in the State of California, which Act was alleged to be null and void and not an exercise of the police power of the State of South Carolina, but a restriction and regulation of commerce between the States and foreign nations, and in conflict with Article L, Sections 8 and 9 of the Constitution of the United States, and laws of Congress, made thereunder, and unconstitutional, null and void.

It appears therefore that the *subject matter* of this section brings it wholly within the jurisdiction of the Circuit Court of the United States.

First. As to the parties.

Second. As to amount involved.

Third. As to rights invoked by plaintiff under the Constitution and laws of the United States.

SECOND EXCEPTION.

That the Plaintiff in the Action is not the Real Party in interest.

It appears by the complaint that the complainants were the proprietors and owners of certain vineyards situated in State of California, and producers of wines, etc., from the grapes of said vineyards. That early in February and March of 1897 the plaintiff, by its travelling agent, took orders from the citizens of the State of South Carolina "to deliver to each of the same in "the City of Charleston" certain packages of wines, etc., then and there agreed upon and ordered by the said residents of the City of Charleston. Folio 2 of record, and thereupon, in pursuance thereof plaintiff shipped on the 20th day of March, 1897, from San Francisco, California, to *its agent* in the City of Charleston, one carload of wine, the wine for each of said customers of plaintiff in the City of Charleston, being in separate, original packages in said car. Folio 3, record.

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Plaintiff further alleges that the defendants wrongfully seized, without warrant, seventy-three packages at South Carolina railroad depot and *stopped delivery thereof* and carried away the same from said depot, Folio 3, and same came into the possession of Defendant Vance, claiming to act as State Commissioner.

The complaint therefore states a case of seizure of the goods sent to *agent* of plaintiff who was entitled to the possession before they reached the purchasers of plaintiff. The testimony of traveling agent sets forth with particularity this transaction which is as follows:

"In the months of February and March, 1897, as such traveling agent I took the orders of a number of residents of Charleston, South Carolina, for purchase of certain packages of wines and brandies, products of plaintiff's vineyards, set forth particularly in the complaint and exhibits, and in pursuance of such orders the W. A. Vandercook Co., on the 20th day of March, 1897, shipped the same for San Francisco, consigned to its *agent*, J. C. Simonds, Cashier First National Bank, at Charleston, South Carolina, in seventy-three separate original packages, each package to be delivered by its agent to person ordering same, and making a car-load lot of the value of twelve hundred dollars. This car-load of wines arrived in Charleston on 16th April, 1897, and while in depot of South Carolina and Georgia Railroad Company, at Charleston, were seized by defendants, W. N. Bahr and J. M. Scott, without warrant, and *delivery* of the same were stopped."

It appears therefore, that by the complaint and by the testimony, which was the only testimony upon the point in the record, that these packages were shipped by the plaintiff to its agent, (John Simonds, Cashier of First National Bank, at Charleston, S. C.,) and were to be delivered to the persons ordering the same by this agent, but delivery thereof was stopped.

The answer of the defendants expressly admits that John Simonds, Cashier of First National Bank, was the party to

whom the packages had been *consigned*. Testimony, therefore, is clear and conclusive upon the point that plaintiff was under contract to deliver these goods to certain consumers, and that the goods were seized on the way to the plaintiff's agent for the purpose of such delivery.

We submit that under the law the Circuit Judge could not find that the plaintiffs were not the real parties in interest. The Bill of Lading, it appears, was by the plaintiff to the order of its own agent, John Simonds, Cashier of National Bank, the right of possession of goods was in John Simonds, Cashier First National Bank, as its agent and the goods were not to be delivered to the person ordering them until the same were paid for, for so the answer expressly states. Folio 20, record.

The plaintiff had not delivered the goods to consumers who ordered them, but only to *its agent*, by Bill of Lading to his order, for purpose of such delivery on payment of money.

Both title and possession was in plaintiff and his agent at time of seizure. The *real party* in interest is and can only be the plaintiff.

Moreover, the Circuit Court has found "the property described in the complaint is the property of the plaintiff," folio 24, Record, and this is a finding of fact on the evidence, and is conclusive as to the question of law as is the "real party" in interest; for by the fact found by the Court the plaintiff alone can be the "real party" in interest.

Such is the effect of the finding of the Circuit Court under the repeated decisions of this Court.

"There is no special finding of facts, and no agreed statement of facts. Obviously, therefore, inquiry in this Court must be limited to the sufficiency of the complaint and the rulings, if any be preserved, on questions of law arising during the trial. Sections 648 and 649 of the Revised Statutes, while committing generally the trial of issues of fact to a jury, authorize parties to waive a jury and submit such trial to the

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Court, adding that "the finding of the Court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury." But the verdict of a jury settles all questions of fact. As said by Mr. Justice Blatchford, in Lancaster vs. Collins, 115 U. S., 222, 225: "This Court cannot review the weight of the evidence, and can look into it only to see whether there was error in not directing a verdict for the plaintiff on the question of variance, or because there was no evidence to sustain the verdict rendered." The finding of the Court, to have the same effect, must be equally conclusive and equally remove from examination in this Court the testimony given on the trial. Insurance Co. vs. Folsom, 18 Wall, 237; Cooper vs. Omohundro, 19 Wall. 65. Further, Section 700 provides that "when on issue of fact in any civil cause in a Circuit Court is tried and determined by the Court without the intervention of a jury according to section six hundred and forty-nine, the rulings of the Court in the progress of the trial of the cause, if excepted to at the time, and duly presented by a bill of exceptions, may be reviewed by the Supreme Court upon a writ of error or upon appeal; and when the finding is special the review may extend to the sufficiency of the facts found to support the judgment; but if there be no special findings, there can be no inquiry as to whether the judgment is thus supported. We must accept the general finding as conclusive upon all matters of fact, precisely as the verdict of a jury.

Martinton vs. Fairbanks, 112 U. S., 670.

Lehnen vs. Dickson, 148 U. S., 72–73.

THIRD EXCEPTION.

That by the provisions of the Dispensary Law of South Carolina, approved March 5, 1896, no action of this kind can be maintained against the defendants, who are State constables and State officers and charged with duties under the law.

It is sufficient, to dispose of this exception, to say that the defendants, S. W. Vance, J. M. Scott and W. N. Bahr, are not sued in their capacity as State officers and State constables, as to the doing any duty wherewith they are charged under the

law. It is true that by the Dispensary Law of the State of South Carolina, Act of March 6, 1896, Section 45, no action for damages can be maintained against a State constable or officer for the discharge of duties of said Act, but this action is brought against these defendants as *individuals*, their defence consisting in pleading this law as justification of their action in their answer; but the State law is no justification when it is declared to be unconstitutional, null and void, in so far as it authorizes a seizure of the products of other States in the course of inter-state commerce with the citizens of the State of South Carolina.

Donald vs. Scott, 165 U. S., 58.

FOURTH EXCEPTION.

That there is a misjoinder of cause of action in that the plaintiff sues for the recovery of the possession of personal property, and also for exemplary damages for the commission of a trespass in taking the same.

It is clear that the complaint is a case for recovery of personal property and for damages for its detention. The allegations in the complaint as to the wrongful taking of the property are not by way of stating a cause of action for malicious trespass, but, under the law of the State of South Carolina are necessary as allegations of wrongful seizure, wrongful taking, and support an action for recovery of personal property, and damages for detention without a previous demand before the suit, and Court, by its judgment, so construed the complaint and gave judgment in conformity to the Code.

In the case of *Burchhalter vs. Mitchell, 27 S. C. 240*, the Court held that one who is in possession cannot be mulcted in damages until some demand is made upon him by the rightful owner to surrender possession; where however, one acquires possession *wrongfully* and with notice of another's claim, then no demand is necessary, for his wrong in that case begins with its possession. *Idem 243.*

It was, therefore, necessary to allege in this complaint that

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the defendants acquired possession wrongfully to relieve the plaintiff of the necessity of demand for delivery previous to the commencement of the suit.

All the allegations, therefore, of the *wrongful* taking, wrongful seizing, are under the law of the State of South Carolina equal to a demand for delivery of possession of the specific property previous to suit brought. In other words they are allegations which show that the defendants' wrong began with their possession by a wrongful taking.

In this light the case is not one of damages for malicious trespass, but damages for detention after a wrongful taking and after a notice of the same.

The same doctrine was announced by the Supreme Court of South Carolina in the case of *Ladson vs. Mostowitz*, 45 S. C., 388, which distinctly holds that an allegation of demand and refusal is essential to a complaint for claim and delivery of personal property against a buyer in good faith, but, on the other hand, holds that an allegation of demand and refusal is not necessary against the defendant who took the chattel wrongfully with notice of a plaintiff's title.

This is exactly the case here. The allegations of the complaint are, that the defendants took these chattels wrongfully unlawfully and maliciously. And even if there might be no demand and refusal of delivery by the defendants to restore possession before suit, such demand and refusal is not necessary where the possession of the defendants commences, as alleged here, in a wrong. At page 392, *Ladson vs. Mostowitz*, the Court thus sums up the whole question :

" When, however, one acquires possession wrongfully, and with notice of another's claim, then no demand is necessary, for his wrong in that case begins with his possession." So that in this case, the allegation being made in the complaint that the defendant, Mostowitz, " wrongfully took said mare and colt from the possession of these plaintiffs," there was no necessity to allege any demand upon *him* ; but there being no allegation that the defendant, White, had done any *wrongful act*, or even had any notice of plaintiff's claim prior to the

commencement of this action, a demand upon *him*, and a refusal to comply with such demand, was necessary to give the plaintiffs any cause of action against him; for, it may be, from all that appears, that he would have complied with such demand."

Moreover, there can be no possible harm done defendants here by this construction of the complaint by the Circuit Judge, for the Circuit Judge has treated complaint as an ordinary action for recovery of personal property and for damages for its detention, and has found the title of the property in the plaintiff, and has found the *damages for detention*. He has found no other damages, he has found no damages for malicious taking, he has found no damages for malicious trespass, he has found only "*damages for detention*." And those damages as matter of fact, were testified to as being at least twelve hundred dollars. The Circuit Judge has found them to be one thousand dollars, and they are conclusive as matters of fact, and are the usual damages accompanying the successful plaintiff who recovers judgment against the defendants for recovery of possession of personal property and damages incident to wrongful detention. The defendants, therefore, have no possible cause of complaint.

The contention that there is a misjoinder of cause of action in this case is due to the lack of clear apprehension of the law in the State of South Carolina relating to recovery or possession of personal property and damages for its detention.

Not only are damages recoverable in addition to the recovery of specific personal property, but the Code of Civil Procedure, Sec. 232, South Carolina, provides in fixing the bond to be given by the defendant for the return of the property, as follows:

"A written undertaking executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit, of the plaintiff for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for *any cause* be recovered against the defendant."

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The Code of Procedure also provides, Sec. 298, as follows:

"Whenever damages are recoverable the plaintiff may claim and recover, if he show himself entitled thereto, any rate of damages which he might have heretofore recovered for the same cause of action."

"And in *Levi vs. Legg*, *23 S. C.*, *282*, the Supreme Court of South Carolina held that in the recovery of personal property damages were incident to the violation of plaintiff's rights."

Again the formal judgment in the case of specific personal property is stated in Section 299 of the Code.—P. 132.

"In any action to recover the possession of personal property judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and of *damages for the detention*."

And it will be noted that the Circuit Court in giving judgment distinctly found that as a matter of fact "That the property described in the complaint is the property of the plaintiff, and that the value thereof is the sum of one thousand dollars, and that the damages to the plaintiff from *the detention* of the said property by the defendants is the sum of one thousand dollars." (Fol. 24, Record.)

"As a matter of law, the Court finds that the plaintiff is entitled to judgment against the defendants for the recovery of the possession of the said property described in the complaint, or the sum of one thousand dollars, value of said property, in case delivery thereof cannot be had, and for further sum of one thousand dollars damages." (Fol. 24, Record.)

It thus appears that the Circuit Judge found the damages to the plaintiff from the *detention of said property* by the defendant to be the sum of one thousand dollars, as a finding of fact, and the judgment is in the exact language of the Civil Code of Procedure of South Carolina, that is damages for detention.

It also appears that the formal judgment entered up of

record in the Court below is for damages to the plaintiff by *reason of detention* of said property by the defendants in the sum of one thousand dollars, fol. (27, Record.) Judgment for damages is for one thousand dollars, damages so found. (Fol. 28, Record.)

It appears, therefore, from review of Record that the damages found by the Court and entered up in the judgment have the express sanction of the principle settled in the law of the State of South Carolina and conformed to the actual form prescribed by the Code of Procedure in such cases. There was no request to Court limiting the nature of damages for detention; nor was there any motion for new trial for excessive damages in Court below.

FIFTH EXCEPTION.

That the Act of General Assembly of the State of South Carolina approved March 6, 1896, and as amended March 5, 1897, generally known as the Dispensary Law, is not in conflict with Article 9 of the Constitution of the United States and is a lawful exercise of the police power of the State in prohibiting the importation by the plaintiff into the State of South Carolina of all intoxicating liquors, products of other States and foreign countries, for storing and sale in South Carolina, and in authorizing a seizure of such intoxicating liquors so imported into the State by plaintiff or any other person.

SIXTH EXCEPTION.

That the provisions of the said Act are not in conflict with Article 9 of the Constitution of the United States, and is a valid exercise of the police power of the State in prohibiting the importation of liquor into the State without an inspection of the same, as required by Act of 1896, as amended by Act of 1897.

SEVENTH EXCEPTION.

That the provisions of the said Act prohibiting the importation of liquors into this State for sale is not a

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valid exercise of the police power of the State within the provisions of the Act of Congress of 1890, known as the "Wilson Act."

We submit this question on these three exceptions, 5, 6 and 7, on our argument and brief on behalf of appellee, W. A. Vandercook Co. in the equity case No, 514, October term 1897, entitled "S. W. Vance, *et al.*, appellants, vs, W. A. Vandercook Co., appellees.

Writ of error must be dismissed because requests and exceptions are general.

There is moreover a final objection to the maintenance of this appeal on the errors alleged in Bill of Exception, because it appears that all of the seven requests to the Court of plaintiff in error, were asked as a whole, and the exception was taken to the refusal of the Court to grant the series of seven legal propositions as a whole. No request was asked separately and the refusal to hold as requested was not excepted to separately by plaintiff in error. (Folio 40–41, Record.)

A refusal of a general request to hold and find as matters of law a series of propositions as a whole is not error; and a general exception to a refusal to grant a series of legal propositions, as a whole is bad, if any one of the series be objectionable.

Union Insurance Company vs. Smith, 124 U. S., 405.
Anthony vs. Louisville Railroad, 132 U. S., 172.

This writ of error must be dismissed, therefore, if any of these seven requests asked as a whole, refused as a whole, and refusal excepted to generally, is objectionable.

J. P. K. BRYAN,
Counsel for W. A. Vandercook Co., Defendant in Error.

NOTE.—Appellee's brief in No. 514, *S. W. Vance, et al, vs. W. A. Vandercook Co., Appellee,* is also submitted on the question of the Constitutionality of the South Carolina Dispensary Law, raised in Exceptions five, six and seven, above.